IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 34 OF 2005

Mr. Agostinho Lobo,
aged about 42 years, married,
businessman, resident of Flat No. T-1,
Third Floor, Kurtarkar Nagar,
B Block, Fatorda, Margao, Goa. ..... Applicant

V e r s u s

1. State of Goa,
   through Chief Secretary,
   Secretariat, Panaji, Goa.
2. Mr. Mangaldas Naik,
   aged about 50 years, married,
   resident of House No.200,
   Ward No.6, Calcondem,
   Margao, Goa.

Ms. Amira Razaq, Advocate for the Appellants.

Mr. A. D. Bhobe, Advocate for Respondent no.2.

CORAM: N. A. BRITTO, J.

DATE: 14th December, 2006.

ORAL JUDGMENT

This is Complainant's appeal against the acquittal of the

accused under Section 138 of the Negotiable Instruments Act, 1881, (Act, for short).

2. The parties hereto shall be referred to in the names as they appear in the cause title of the complaint.

3. The case of the Complainant, in brief, was that the accused towards the amount due and payable to the Complainant towards commercial transaction, had issued a cheque dated 20.02.2002 for Rs.10,500/- and when the said cheque was presented for payment on 08.07.2002, the same was dishonoured with endorsement that the funds were insufficient, which the Complainant came to know on 11.07.2002. The Complainant served statutory notice dated 24.07.2002, calling upon the accused to pay the amount due within a period of 15 days. There is no dispute that the accused did reply the said notice, though the Complainant did not produce the copy of the reply sent by the accused.

4. The Complainant examined himself in support of his case. As per the accused, he did not owe any amount to the Complainant and in support of the same, the accused examined his wife.

5. As far as the facts go, there is no dispute that the accused owed to the Complainant a sum of Rs.17,300/-. It would be immaterial whether the said debt was due to the Complainant by the accused on account of sale of coconuts or otherwise. The wife of the accused in her evidence has clearly stated she had paid all the dues of the Complainant amounting to Rs.17,300/-. Although the reply by the accused to the statutory notice was not produced by the Complainant, a copy of the said reply was produced for my perusal and it shows that the accused had stated in the said reply that he had taken a loan of Rs.10,000/- and in token thereof, he had issued an undated cheque for Rs.10,000/-. The accused had also stated that later on, the Complainant had agreed to purchase the scooter bearing registration no. GA-02/K-3550, which was in the name of the wife of the accused, for Rs.25,000/- and had agreed to adjust the loan amount from the money of the scooter. The accused also had stated that the Complainant had returned the scooter and had also taken the same back forcibly again.

6. The wife of the accused in her evidence had stated that she had sold her LML Vespa Scooter bearing registration no. GA-02/K-3550, costing Rs.25,000/- in lieu of the amount due by her husband and she gave the

possession of the said scooter to the Complainant. She had also stated that she had paid all the dues of the Complainant amounting to Rs.17,300/-. She further stated that after the sale of the said scooter for Rs.25,000/- to the Complainant, the Complainant was liable to pay to the accused a balance amount of Rs.7,700/-. She had also stated that her husband, the accused did not owe any amount to the Complainant and, on the other hand, it is the Complainant who owed the balance amount of Rs.7,700/-. When the Complainant was cross examined, the Complainant too had admitted that since the amount of Rs.17,300/- was not paid, the Complainant was given the said scooter and form no. 30 for transferring the same. In other words, it is an admitted position that for the liability of the Complainant in the sum of Rs.17,300/-, the wife of the accused had sold to the Complainant the scooter valued at Rs.25,000/-, by handing over not only the said scooter but also form no.30/Sale letter.

7. It appears that the controversy started between the Complainant and the accused when the Complainant was unable to get the transfer of the said scooter in the name of the Complainant since according to the Complainant, on the records of the RTO, the said scooter was shown as sold to one Rose Dias, resident of St. Jose De Areal and, in that context,

the Complainant subsequently filed a criminal case against the accused bearing no.11/P/03/C, which is stated to be pending trial. The said complaint case was filed under Sections 177, 415 and 417 I.P.C.

8. Learned Advocate Ms. A. Razaq submits that the scooter was given earlier i.e. on 16.10.2001 as stated by the Complainant in his complaint bearing no. 11/P/03/C, a copy of which was produced by the wife of the accused. She further submits that the subject cheque dated 20.02.2002 for Rs.10,500/- was issued to the Complainant by the accused because by handing over of the scooter, the liability of the Complainant was not discharged as the scooter could not be transferred. In this context, Ms. Razaq has pointed out to another statement of the wife of the accused by which she stated that "the cheque was issued in respect of the scooter and not regarding the shop." At this stage, it also may be noted that on behalf of the Complainant, it was suggested to the said wife of the accused, that the subject cheque was issued towards the supply of coconuts. In other words, the suggestion was that the subject cheque was issued in part discharge of the liability of Rs. 17,300/-. On the other hand, it is submitted on behalf of the accused by learned Advocate Shri Bhobe, that the admitted dues of Rs.17,300/- were made good by the accused by the sale of the

scooter of the value of Rs.25,000/- and, therefore, there was no liability which the accused was required to meet, the entire liability having been made good by the sale of the said scooter.

9. Admittedly, the subject cheque for Rs.10,500/- is dated 20.02.2002. Neither in the complaint, nor in the entire evidence of the Complainant, there is any categorical statement made by the Complainant that the subject cheque was issued by the accused because the scooter could not be transferred to the Complainant for some reason or other or that it was in addition to Rs.25,000/- which he accepted by way of sale of scooter towards the liability of Rs.17,300/-. If it was so, the Complainant ought to have stated so. On the contrary, the suggestion put to the wife of the accused shows that the subject cheque was issued towards the initial liability of Rs.17,300/-. Only because the Complainant stated in his complaint that the scooter was given on 16.10.2001, copy of which was produced by the accused, it could not be said that the scooter was given initially on 16.10.2001 and the subject cheque was given subsequently, on 20.02.2002. If that was so, the Complainant ought to have made a categorical statement in that regard. A scooter is a moveable property. The wife of the accused handed over the possession of the scooter of the value

of Rs.25,000/- to the Complainant and admittedly, the said scooter is with the Complainant till date. This, the wife of the accused did along with form no.30/Sale letter. There is no dispute that the Complainant accepted the said scooter at the value of Rs.25,000/- towards the liability of the accused, in the sum of Rs.17,300/- and, therefore, it is to be concluded that the cheque which was issued was towards the debt which was already paid. The accused has been able to demonstrate that the cheque which was issued was towards the debt which was already paid. In this view of the matter, the acquittal of the accused could not be faulted.

10. There is no merit in this appeal and, consequently, the same is hereby dismissed. Needless to observe, the observations made herein are only for the purpose of deciding this case and will not come in the way of the learned Magistrate trying the case bearing no. 11/P/03/C.

N. A. BRITTO, J.

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